

§ 1003.5

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purpose, and from which such emissions are unintended, and as a result of its design, production or assembly;

(1) It emits electronic product radiation which creates a risk of injury, including genetic injury, to any person, or

(2) It fails to conform to its design specifications relating to electronic radiation emissions; or

(b) It is a product which utilizes electronic product radiation to accomplish its primary purpose and from which such emissions are intended, and as a result of its design, production or assembly it;

(1) Fails to conform to its design specifications relating to the emission of electronic product radiation; or

(2) Without regard to the design specifications of the product, emits electronic product radiation unnecessary to the accomplishment of its primary purpose which creates a risk of injury, including genetic injury to any person; or

(3) Fails to accomplish the intended purpose.

§ 1003.5 Effect of regulations on other laws.

The remedies provided for in this subchapter shall be in addition to and not in substitution for any other remedies provided by law and shall not relieve any person from liability at common law or under statutory law.

Subpart B—Discovery of Defect or Failure to Comply

§ 1003.10 Discovery of defect or failure of compliance by manufacturer; notice requirements.

Any manufacturer who discovers that any electronic product produced, assembled, or imported by him, which product has left its place of manufacture, has a defect or fails to comply with an applicable Federal standard shall:

(a) Immediately notify the Secretary in accordance with § 1003.20, and

(b) Except as authorized by § 1003.30, furnish notification with reasonable promptness to the following persons:

(1) The dealers or distributors to whom such product was delivered by the manufacturer; and

(2) The purchaser of such product and any subsequent transferee of such product (where known to the manufacturer or where the manufacturer upon reasonable inquiry to dealers, distributors, or purchasers can identify the present user).

(c) If a manufacturer is required to notify the Secretary under paragraph (a) of this section and also is required to report to the Food and Drug Administration under part 803 of this chapter, the manufacturer shall report in accordance with part 803. If a manufacturer is required to notify the Secretary under paragraph (a) of this section and is not required to report to the Food and Drug Administration under part 803, the manufacturer shall notify the Secretary in accordance with paragraph (a) of this section.

[38 FR 28628, Oct. 15, 1973 and 49 FR 36351, Sept. 14, 1984]

§ 1003.11 Determination by Secretary that product fails to comply or has a defect.

(a) If, the Secretary, through testing, inspection, research, or examination of reports or other data, determines that any electronic product does not comply with an applicable Federal standard issued pursuant to the Act or has a defect, he shall immediately notify the manufacturer of the product in writing specifying:

(1) The defect in the product or the manner in which the product fails to comply with the applicable Federal standard;

(2) The Secretary's findings, with references to the tests, inspections, studies, or reports upon which such findings are based;

(3) A reasonable period of time during which the manufacturer may present his views and evidence to establish that there is no failure of compliance or that the alleged defect does not exist or does not relate to safety of use of the product by reason of the emission of electronic product radiation.

The manufacturer shall have an opportunity for a regulatory hearing before the Food and Drug Administration pursuant to part 16 of this chapter.

(b) Every manufacturer who receives a notice under paragraph (a) of this section shall immediately advise the